

REMARKS

The Preliminary Amendment filed herewith is intended to place the claims of the application in substantially the same condition as the amended claims of the parent application, Application No. 09/175,748, on which this Continuation application is based. Certain corrections to the claim numbering have been made. Specifically, amended claims 12-14 of the parent application depended from canceled claim 1, but in the present Preliminary Amendment, claims 12-14 depend from claim 11. Also, method claim 26 of the parent application depended from claim 15, but in the present Preliminary Amendment, claim 26 depends from method claim 25.

The Applicants respectfully resubmit herewith a copy of the Request for Interference with Patent Under 37 CFR §1.607 filed in the parent application, and ask that it be considered as a renewed Request in the present Continuation application, which shares the effective filing date of October 20, 1998 with the Applicant's parent Application No. 09/175,748.

As indicated in the Remarks section of the Preliminary Amendment filed in the parent application, new claims 11-14 and 25-27 are the same as Claims 1-3, 36, 14, 24 and 25, respectively, of patent 6,136,339. Those seven claims are presented as proposed counts for the declaration of an interference requested in the accompanying copy of the Request for Interference with Patent under 37 CFR §1.607, which, as indicated above, is respectfully requested to be considered as a renewed request.

In the accompanying Request, Applicants apply the terms of new claims 11-14 and 25-27 to the specification of this application. It is submitted that Applicants' invention as disclosed fully supports such claims because Applicants' food supplement includes as essential ingredients lipoic acid or a derivative thereof and creatine or a derivative thereof, and such supplement is disclosed as being intended for oral administration.

Referring to 37 CFR §1.608(a), the difference between the effective filing date of U.S. Patent No. 6,136,339 (August 21, 1998) and the effective filing date of this application (October 20, 1998) is considerably less than three months.

Accordingly, it is submitted that by this amendment and the accompanying renewed Request, Applicants have made a prima facie showing for the declaration of an interference between this application and patent 6,136,339.

Applicants also submit herewith a copy of the June 24, 2002 Declaration of David J. Barnes submitted in support of the Applicants' parent application, and respectfully request that it be considered in, and made a part of the record of, the present Continuation application. A November 4, 2003 Supplemental Declaration of David J. Barnes, submitted on November 6, 2003, was also submitted in the Applicants' parent application. However, by way of an Advisory Action mailed December 22, 2003, the Examiner in the parent application stated that the Supplemental Declaration was not in declaration form. Therefore, the Applicants respectfully submit herewith a "(Second) Supplemental Declaration of David J. Barnes," which is understood to be in proper declaration form, inasmuch as it includes the statement "I further declare that I am warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statement sand the like may jeopardize the validity of the application or any patent(s) that may issue on the application , and I declare that all statements made of my own knowledge are true, and that all statements made on information and belief are believed to be true." It is requested that the (Second) Supplemental Declaration of David J. Barnes also be considered and made of record in the present Continuation application.

Respectfully submitted,


Jeremy R. Kriegel
Reg. No. 39,257

Date: February 18, 2004

Marshall, Gerstein & Borun LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, IL 60606-6357
Phone: (312) 474-6300
Fax: (312) 474-0448